

Nebraska has established systems designed to ensure that the Nebraska Department of Education (NDE) and the local education agencies (LEA) are fully implementing the requirements of the Individuals with Disabilities Education Act (IDEA) Part B. Additionally, NDE has taken steps to ensure mechanisms are in place to drive improved results for students with disabilities. A review of these systems is included below.

#### General Supervision:

Nebraska's statutes regarding the provision of a free appropriate public education are included in Neb. Rev. Stat. §§79-1110 through -1167. Administrative regulations implementing Nebraska's statutes and the IDEA are contained in 92 Neb. Admin. Code § 51 (Regulations and Standards for Special Education Programs) and 92 Neb. Admin. Code § 55 (Special Education Appeals). The Office of Special Education monitors these regulations to ensure full implementation by the local education agencies.

#### Monitoring:

The Office of Special Education (NDE-OSE) monitors all districts annually based on a weighted risk analysis of all their Special Education data submitted. Through the analysis, districts then receive a focused or differentiated monitoring in four priority areas.

##### Monitoring Priority Areas:

1. Provision of a free appropriate public education (FAPE) in the areas of: least restrictive environment (LRE); individualized education program (IEP) requirements; discipline protections, and secondary transition;
2. Eligibility determination including the identification, evaluation, and verification of children and youth with disabilities, including disproportionate representation;
3. Procedural Safeguards; and
4. General Supervision.

#### Nebraska Counts – Annual Weighted, Risk Analysis:

The NDE-OSE monitors all districts on an annual basis using a weighted, risk analysis called Nebraska Counts (NE Counts). The goal of NE Counts is to create a comprehensive process that looks at all districts across a variety of factors/indicators that affect outcomes for students with a disability and an IEP. This process uses a risk analysis to identify districts that are high, medium, and low risk, based on a combination of compliance and outcomes data. From this process, 20% of districts in the high-risk category must then engage in focused (differentiated) monitoring.

The focused (differentiated) monitoring process includes the development of a district data profile in which districts have the opportunity to provide the story behind the data in order to determine supports needed to ensure students with disabilities and an IEP are successful. From there, the process engages districts in a more meaningful dialogue in all of the data that districts

currently report, enhancing communication between NDE and the district to develop improvements in moving Nebraska forward.

### Focused Monitoring

The NDE-OSE focused monitoring process is differentiated which allows for individualization at the District level. The framework for Focused Monitoring is composed of three components:

1. A District Data Collection, which is an opportunity for the District to provide current data and information in the build out of its district data profile.
2. The Desk Review completed by the NDE Special Education Monitoring Team.
3. The Monitoring Summary Meeting which is completed with the School District, and participants include the NDE Special Education Monitoring Team Members, District staff, and Educational Service Unit (ESU) Support Personnel (if desired).

### *Protocol Steps for Part B Focused Monitoring Year One*

#### *Step 1 - Notification of Special Education Monitoring*

Districts in the 20% pull of weighted, risk analysis are notified that they must participate in the Part B Focused Monitoring Process for that calendar year.

The District Superintendent and Director of Special Education receive notification in January of the calendar year. A copy of the letter is posted on the Improving Learning for Children with Disabilities (ILCD) online portal, under the Accountability tab for future reference.

#### *Step 2 - District Data Collection*

Districts are asked to participate in the completion of several Data collections. Districts receive a letter from the Monitoring Leads containing the following:

- Monitoring Team and Lead Contact;
- The Success Gaps Toolkit;
- Instructions on completion of Indicator 13 and Policies and Procedures on ILCD 3.0;
- Monitoring Protocol; and
- NE Counts Data Snapshot

Districts are asked to complete the Success Gaps Toolkit, Indicator 13, and Policies and Procedures by March 1. The District sends the information to the District's NDE Monitoring Team Contact

### Step 3 – Desk Review

Districts are assigned an NDE Monitoring Team who utilizes information gathered within the District Data Collection as well as notifies the district of the student files to be reviewed as part of the NDE Desk Review. The District may:

1. Provide limited access to their electronic student system or
2. Provide the paper version of the student files.

The following items are part of the Desk Review:

#### Forms Review

To determine whether the district has in place practices which are likely to result in full implementation of the special education regulations, NDE reviews District forms for documenting and implementing IDEA and Rule 51 regulations.

#### Policies, Procedures and Practices

School Districts are required to have policies, procedures, and practices which are consistent with the requirements of the IDEA and Rule 51. Annually, districts must submit a checklist indicating whether they have policies, procedures, and practices in place to fully implement the requirements of the IDEA and Rule 51. Additionally, districts are required to have on file with NDE, their most current policies and procedures.

#### Complaint Investigations and Due Process Cases

Complaints and due process hearings filed within the previous year, with instances of noncompliance identified and corrected through either of these processes must be included in the student file review to ensure that corrections continue to be in place.

#### Correction of Previously Identified Noncompliance

As part of the Desk Review, the NDE Special Education Monitoring Team reviews any previous letter of findings of noncompliance. The NDE Monitoring Team notes any corrective actions taken by the district to ensure correction.

#### Previous fiscal reviews or sub-recipient fiscal reviews

Fiscal reviews or sub-recipient fiscal reviews conducted during the previous year are reviewed to determine whether it is necessary to review specific standards during the Focused Summary Meeting. If a fiscal review or sub-recipient review resulted in a finding of noncompliance, the standard which was the basis for that finding is reviewed during the on-site visit.

#### Data: Performance Report, Nebraska Education Profile, Trend Data

Districts are required to submit data for Indicator 13 (Secondary Transition with IEP Goals) on ILCD 3.0 as well as the Success Gap Tool Kit. Indicator 13 data, responses to the Success Gap Tool Kit and all other sources of data are reviewed. Significant elements or results are discussed and an analysis of the impact on the priority areas of monitoring.

#### Review of District Files

The NDE Monitoring Leads select the student files to be reviewed during the desk review. The number of students within the district have an impact on the number of files reviewed during the desk review. During the desk review a targeted review of the student files are completed, which may include all of the priority areas (see page 1). This is determined from a review of the district's data portfolio, information provided by the district on the Success Gap Tool Kit, and other Desk Review components.

#### Step 4 - Monitoring Summary Meeting

At the conclusion of the Desk Review, the Monitoring Team analyzes the data and develops a preliminary agenda for the Focused Monitoring Summary Meeting. Elements of the district's special education process that may need some clarifications are outlined.

The District's NDE Monitoring Team contacts the District to confirm the date of the onsite or Zoom meeting. A report is sent to the district outlining all of the information to be discussed within the Monitoring Summary Meeting. The NDE Monitoring Team leads the Monitoring Summary Meeting. Those participating in the meeting are determined by the NDE Monitoring Team and district staff. Districts have an opportunity to discuss the results as well as an opportunity to provide additional information of improvement activities and possible corrective action plan needs.

#### Step 5: Identification of Areas of Improvement/Findings

During the Monitoring Summary Meeting, the NDE Monitoring team recaps the findings from the Data Collection and Desk Review and makes recommendations for areas of improvement as well as possible corrective action. The findings illicit one of the following actions:

1. If there is missing documentation of the regulations, procedures or practices identified during the desk review, the district is given 10 working days to provide documentation of implementation.
2. If there is noncompliance identified during the review of the regulations, procedures and practices, a Letter of Findings is issued and a Corrective Action Plan (CAP) is developed, approved and completed within one (1) year of the notification of noncompliance.

3. If there is no noncompliance identified during the review of the regulations, procedures and practices, or recommendations for improvement, the Monitoring Summary Meeting is finalized, and a Monitoring Closeout Letter is issued to the school district or approved cooperative, closing the monitoring activities for that year.

### *Protocol Steps for Part B Focused Monitoring Year Two*

#### *Step 1 - Development of Improvement Plan/Corrective Action Plan*

Pursuant to 92 Neb. Admin. Code § 51-004.14D, all noncompliance must be corrected as soon as possible, and in no case no later than one year from the date on which the district is notified of a finding of noncompliance. All activities associated with the correction and verification of correction of noncompliance must be completed by the District. A Letter of Findings is sent to the District, when the Monitoring Summary Meeting is finalized.

#### *Corrective Action Plan (CAP):*

The NDE Monitoring Team contacts the school district to discuss the corrective action plan, review the noncompliance identified during the file review, and assist the school district in developing the corrective action plan. The submission, approval and completion of the Corrective Action Plan must be completed within the timeline the NDE Monitoring Team specifies in the Letter of Findings.

Throughout the corrective action process, interaction between the school district and the NDE Monitoring Team is documented to ensure that the corrective action process is completed within the timeline. Documentation is maintained regarding each step of the corrective action process (i.e., when the plan is submitted for approval; when the plan is approved by NDE; when the plan is completed; etc.) on ILCD 3.0.

The CAP must include each of the regulations found to be out of compliance in individual files. For each regulation found to be in noncompliance, the corrective action plan must contain the actions which the district will take to ensure full implementation of the regulation in the future, the timelines and persons responsible for taking the actions, and the manner in which the district will evaluate the effectiveness of the corrective action. The CAP also includes areas for improvement.

### NDE Review and Approval of the Corrective Action Plan

When the district has developed the CAP, it submits the CAP to the District's NDE Monitoring Team for review and approval. The NDE Monitoring Team either "Approves" or "Disapproves" the CAP. If NDE approves the CAP, the district is notified and may proceed with CAP implementation. If NDE disapproves the CAP, the district must revise the CAP, and resubmit.

### Implementation of the Corrective Action Plan

The intention of the NE Counts Analysis is to develop a synthesis of training and technical assistance needs in each region based on the data provided by each District. Corrective Action Plan implementation may be completed through regional training/technical assistance when areas of need arise.

The NDE Monitoring Team is prepared to assist the district with the implementation of the corrective action planning. Assistance may include:

- Targeted Technical Assistance, as needed at the state, district, or ESU level;
- Providing additional training to the district staff;
- Providing materials for trainings;
- Contacting a possible consultant/presenter;
- Reviewing proposed revisions to policy, procedures and practices;
- Assisting the district in developing or revising their forms.

### NDE Review and Approval of the Completed Corrective Action Plan

When the district has completed all of the corrective activities outlined in the CAP, it submits documentation of the completed CAP activities to the District's NDE Monitoring Team Contact for review and approval. The NDE either "Approves" or "Disapproves" the completed CAP activities. If there is sufficient documentation of correction of noncompliance, the completed CAP is submitted and approved. If there is not sufficient documentation of correction of noncompliance, the completed CAP is disapproved, and the district must revise the documentation of correction of noncompliance, and resubmit.

### Step 2 - Documentation and NDE Verification of Correction of Noncompliance

NDE takes the following steps to determine that the noncompliance has been corrected. These are not exclusive steps, other steps may be added as needed, to document that the correction of noncompliance has been completed successfully.

The NDE Monitoring Team selects for review the student files which contain noncompliance issues, and additional student files to document that there are no further issues of noncompliance, and to verify that the CAP was effective in correcting the issues of noncompliance.

- Review the documentation submitted by the district that the corrective action plan has been implemented (i.e., revised policies/procedures etc.).
- NDE reviews the individual student files found to have noncompliance issues, unless the child is no longer within the jurisdiction of the school district or approved cooperative.
- NDE reviews whether the required action was completed, although late, unless the child is no longer within the jurisdiction of the school district or approved cooperative.
- Based on a review of updated data from subsequent review or data collection, NDE determines whether the school district is now correctly implementing the specific regulatory requirement.

The Completion Date for the correction of all noncompliance is within one year of the date of the issuance of the Letter of Findings.

### *Step 3 - Closing the Corrective Action*

The NDE Monitoring team completes the Closeout of the Corrective Action following receipt of documentation showing completion of all corrective action. The NDE Monitoring team notifies the District that it has completed the CAP successfully and has corrected the areas of identified noncompliance. NDE issues a CAP Closeout letter no later than one year from the date of the Letter of Findings.

### *Protocol Steps for Part B Focused Monitoring Year Three*

The NDE Monitoring teams sends the Monitoring Closeout Letter come within the third year of the monitoring cycle. The closeout letter includes language that all steps of the monitoring process have been completed.

### *State Complaint Investigations:*

NDE-OSE is responsible for the implementation of the state complaint process within the 60-day timeline established in IDEA. The regulations regarding the state complaint procedures are included in 92 Neb. Admin. Code § 51-009.11. Pursuant to these regulations, any organization or individual may file a complaint which includes a statement that the public agency has violated a requirement of 92 Neb. Admin. Code § 51, 34 C.F.R. § 300, or Part B of the IDEA. The complaint must include the facts upon which the complaint is based and the signature and contact information of the complainant. If the complaint alleges violations regarding a specific child, the

complaint must include the name and address of the child, the name of the school, a description of the nature of the problem, and a proposed resolution of the problem to the extent known. The complaint must allege a violation that occurred not more than one year from the date the complaint was received and the party filing the complaint must forward a copy of the complaint to the school district serving the child.

Within 14 days of receipt of the complaint, the Complaint Investigator notifies the complainant and the public agency that a violation has been alleged and informs the public agency that it has 14 days in which to submit a written response.

The Complaint Investigator investigates each complaint and may require further oral or written information by all parties and may conduct an on-site investigation if necessary. The complainant has the opportunity to submit additional information either orally or in writing about the allegation. Within 60 days of receipt of the signed written complaint, the Complaint Investigator reviews all relevant information and provide written findings of fact and conclusions based on the findings to all parties. An extension of the 60-day timeline is permitted only if there are exceptional circumstances with respect to a particular complaint or if the parent and school district agree to extend the time to engage in mediation or to engage in other alternative means of dispute resolution.

If it is determined that there has been a failure to comply with the regulations, the Complaint Investigator includes in the notification of findings the steps necessary to bring the public agency back into compliance. These steps may include technical assistance, negotiations and corrective actions.

Additional information regarding the complaint process is available in 92 Neb. Admin. Code § 51-009.11 or on the NDE webpage at: <https://www.education.ne.gov/sped/state-complaint/>.

#### Mediation:

NDE provides a process for the mediation of disputes to allow parties to resolve disputes involving any matters related to the proposal or refusal to initiate or change identification, evaluation or the educational placement of the child or the provision of a free appropriate public education. There are six mediation centers located throughout the state and individuals seeking to initiate the mediation process may contact the center in their area who arrange a meeting and invite both parties. The mediators, who are trained in effective mediation techniques, conduct the mediation in an attempt to resolve the dispute. Mediation is voluntary on the part of the parties and may not be used to deny or delay the parent's right to due process hearings.



NDE bears the cost of the mediation process, including the cost of meetings. Mediation sessions are scheduled in a timely manner and are held in locations that are convenient to the parties to the dispute. In cases where a resolution is reached to resolve the issue, the parties execute a legally binding agreement that sets forth the resolution. The agreement must state that all discussions that occurred during the mediation are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding and must be signed by both the parent and a representative of the agency who has authority to bind the agency. The agreement is enforceable in any State court of competent jurisdiction or a district court of the United States.

Additional information regarding the mediation process is available in 92 Neb. Admin. Code § 51-009.12 or on the NDE webpage at: <https://www.education.ne.gov/sped/mediation/>.

#### Due Process Hearings:

A parent or a school district may initiate a hearing on any of the matters related to the identification, evaluation, educational placement, or the provision of a free appropriate public education of a child with a disability by filing a petition pursuant to 92 Neb. Admin. Code § 55. The petition must be filed within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis for the petition unless the parent was prevented from requesting a hearing due to specific misrepresentations by the school district that it had resolved the problem or the school district withheld information from the parent that was required to be provided to the parent.

Upon receipt of the initial petition, NDE assigns a hearing officer to the case who is responsible for conducting the prehearing conference and/or a hearing and rendering a final decision and order. The hearing officer is not a person who is an employee or officer of a state or local agency which is involved in the education or care of the child on whose behalf the hearing is being held. The hearing officer may not participate in any way in a hearing in which the hearing officer may have a conflict of interest which would conflict with his or her objectivity.

Any party to a due process hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of the child with disabilities. The school district must inform parents of any free or low-cost legal and other relevant services available to them in the area if the parent requests the information or if the parent or the school district initiates a hearing under 92 Neb. Admin. Code § 55.

The parties have the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. Additionally, the parties may prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the

hearing. The parties may obtain a written or, at the option of the parents, an electronic, verbatim record of the hearing and findings of fact and decisions. Parents may have the child present who is the subject of the hearing and may open the hearing to the public. Additionally, the parent has the right to have the record of the hearing and findings of fact and decisions provided at no cost to the parent.

A copy of the rule containing the hearing procedures, including timelines, the child's status during the hearing procedures and information regarding the finality of decisions and the right to appeals is available here: [https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55\\_2012.pdf](https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55_2012.pdf).

This rule also contains information regarding the right to attorney's fees.

A sample/model form for use by individuals wishing to file a due process hearing petition is available here: <https://www.education.ne.gov/sped/due-process/>.

#### Resolution Process:

Within 15 days of receiving notice of the parent's due process complaint and prior to the initiation of a due process hearing, the school district is required to convene a meeting with the parent and relevant members of the IEP team who have specific knowledge of the facts identified in the due process complaint. The purpose of the meeting is for the parent to discuss the due process complaint and the facts that form the basis of the complaint. This gives the school district the opportunity to resolve the dispute. A meeting is not required if the parent and school district agree in writing to waive the meeting or the parent and school district agree to use mediation.

The resolution period and adjustments to the resolution period are included in 92 Neb. Admin. Code §§ 51-009.13B and -009.13C. If a resolution to the dispute is reached, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the school district who has authority to bind the school district. The agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.